

# ANALYSIS OF AMENDED BILL

## Franchise Tax Board

Author: Simitian Analyst: Darrine Distefano Bill Number: AB 2922  
Related Bills: See Legislative History Telephone: 845-6458 Amended Date: 04-18-2002  
Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** State Agencies Provide to the Office of Privacy Protection a Description of Their System of Records

### SUMMARY

This bill would require each state agency to provide to the Office of Privacy Protection (Office) a description of its system of records. The Office would be required to use this information to create the State Personal Information Inventory.

This analysis will address the bill only as it impacts the Franchise Tax Board.

### SUMMARY OF AMENDMENTS

The April 11, 2002, amendments, made the following changes:

- Significantly restated the bill's language, deleting the previous requirement that the Office would post the information on its website, and instead substituting that the Office would create a central catalogue for the information.
- Required the Office to adopt regulations regarding the information state agencies must supply, and changed the description of the information.

The April 18, 2002, amendments, made the following changes:

- Significantly expanded the description of information a state agency must provide to the Office.
- Made various minor changes.

This is the department's first analysis of this bill.

### PURPOSE OF THE BILL

The author's staff indicated the purpose of this bill is to provide a central location for individuals to find out what information state agencies collect, how that information is used, and how that information is stored in a state agency's system.

### EFFECTIVE/OPERATIVE DATE

This bill would be effective January 1, 2003. All state agencies must provide the required information no later than July 1, 2003.

### POSITION

Pending.

Board Position:

_____ S	_____ NA	_____ NP
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_____ N	_____ OUA	_____ X PENDING

Department Director

Date

Alan Hunter for GHG

5/16/02

## **Summary of Suggested Amendments**

Department staff is available to assist with amendments to resolve the concerns discussed in this analysis.

## **ANALYSIS**

### **FEDERAL/STATE LAW**

Current federal law requires federal agencies to publish in the Federal Register a description of its system of records maintained on individuals and the procedures an agency follows to assist individuals who request information about their records. The Government Printing Office publishes the Federal Register and posts it (including each agency's list) on the World Wide Web.

Federal and state laws require state agencies to comply with strict requirements and guidelines in the use of personal information. The Information Practices Act (IPA) of 1977 (Civil Code section 1798, et. seq.) and the California Public Records Act (PRA)(Government Code section 6250, et. seq.) provide measures to assure fair treatment of individuals who are referred to in state agency records.

Existing state law provides for the Office of Privacy Protection within the Department of Consumer Affairs. Its duties are to protect an individual's personal information consistent with the California Constitution. The office identifies problems in the area of privacy and facilitates the development of fair information practices according to the IPA of 1977.

### **THIS BILL**

This bill would require each state agency to provide a description of the general categories or classes of personal information contained in its system of records to the Office by July 1, 2003.

Specifically, this description will include but is not limited to:

- The name and location of the system.
- The categories of individuals whose records are maintained in the system.
- The categories of records maintained.
- Each routine use of the records contained in the system, including the categories of users and the purpose of each use.
- The title and business address of the agency official who is responsible for the system of records.
- The categories of sources of records in the system.
- Whether the categories of information are personal information or public information.
- Known or foreseeable disclosures of the records contained in the system.

State agencies would be required to update this information annually.

This bill would require the Office to create a central catalogue of this information, known as the State Personal Information Inventory. The Office would make this catalogue available to the general public by March 1, 2004. This bill would require the Office to adopt regulations concerning the collection, use, disclosure, or reporting of personal information by state agencies to it for inclusion in the inventory.

## IMPLEMENTATION CONSIDERATIONS

This bill uses undefined terms, such as "central catalogue" and "categories." It is unclear if the "central catalogue" is a web site or paper document maintained by the Office where the public can review the information collected by state agencies. This bill uses the term "category" very broadly, e.g. "categories of individuals," "categories of users," and "categories of sources of records." A similar reporting requirement to the Office of Information Practices expired 10 years ago. The Franchise Tax Board (FTB), under that requirement, defined categories of individuals as taxpayers and categories of users as employees of FTB. If the author's intent is to be more specific within these categories, further clarification is required. Also, the author may wish to utilize the language from the previous law for ease of implementation.

The intent for the bill's requirement to have the state agency describe whether the categories of information in the system of records are personal or public information is unclear. Under the Revenue and Taxation Code, personal taxpayer information received by FTB is confidential and cannot be released as public information.

It is unclear if the term "location" means the central location where the system is located or the various locations where the system can be accessed. FTB has several district and satellite offices throughout California and the United States. All of the systems are located at the central office in Sacramento; however, if the author's intent is to notify the public where the systems are accessed, further clarification is required.

The bill defines the term "system of records," but it is still unclear if this term includes systems that contain employee information. Since the intent of this bill is to allow the public to know what information a state agency maintains on them, the author may wish to exclude systems that contain employee information under the definition of system of records. Also, it is unclear if this term includes computer systems or paper systems or both.

In order to meet the July 1, 2003, deadline for providing the information this bill would require, the department would need to redirect personnel from other projects.

This bill requires the Office to post in the central catalogue a list of each agency's system of records. It is unclear whether the central catalogue will be on the Office's web site. If on the web site, additional information requests may be generated by individuals browsing the Internet. The department may require additional personnel resources to respond to these requests.

The bill requires the Office to adopt regulations on the collection, use, and disclosure of personal information by state agencies. This language could be interpreted to allow the Office to regulate how a state agency collects personal information for its own purposes. The author may wish to further clarify this requirement to eliminate any confusion for a state agency and for individuals supplying personal information to an agency.

## **LEGISLATIVE HISTORY**

SB 170 (Roberti, Ch. 709, Stats. 1977) established the Office of Information Practices within the State Personnel Board. This office assisted individuals in identifying and securing their personal records. This law also required state agencies to annually file notices on their system of records with the Office. This office was dissolved in 1992.

SB 129 (Peace, Ch. 984, Stats. 2000) established the Office of Privacy Protection within the Department of Consumer Affairs.

## PROGRAM BACKGROUND

Previously under the now repealed sections of the IPA, state agencies were required to annually file a notice that contained a listing of each system of records with the Office of Information Practices. The notice included several specific items, similar to the provisions of this bill, and was available to the public once filed. When the Office of Information Practices was dissolved, the notice requirement was repealed.

## OTHER STATES' INFORMATION

*New York* has established a Committee on Open Government that oversees and advises on the Freedom of Information Law, Open Meetings, and Personal Privacy Protection Laws. The Committee supplies advisory opinions at the request of any person who is the subject of a public record or to any state agency who is seeking to comply with the Personal Privacy Protection Law.

*Minnesota* requires a state official to prepare a public list describing each category of record, file, or process maintained by a state agency, statewide system, or political subdivision relating to an individual's private or confidential information.

The laws of these states were reviewed because of their similarities between California's population and between California's and their public records laws.

## FISCAL IMPACT

Until the Office of Privacy Protection adopts the regulations, it is difficult to calculate the administrative costs for this bill. Preliminary implementation estimates anticipate costs of approximately **\$48,000 and .6 Personnel Years (PYs)** of redirected resources to comply with the request for a description of the department's system of records. It is anticipated that ongoing maintenance of the list could be handled during the department's annual system updates.

In addition, this bill would result in requests for information that could have significant customer service impacts on the department. It is estimated that increases in the number of IPA/PRA requests could range in costs of **\$84,000 to \$380,000, and 1 to 5 PYs.**

## ECONOMIC IMPACT

This bill would not impact the state's income tax revenue.

## ARGUMENTS/POLICY CONCERNS

By listing the system of records in the State Personal Information Inventory, there could be the potential security risk for state agencies. Although the bill does not require agencies to specify the computer coded address of a system of records, providing the name of the system of record may provide enough detail for a person to illegally access the computer system.

## LEGISLATIVE STAFF CONTACT

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